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 Candelario, Sherri Candelario, Shared Housing Solutions,  
 LLC and Kate's House Foundation

14 **UNITED STATES DISTRICT COURT**  
 15 **DISTRICT OF ARIZONA**

16 Recovery Housing Academy, LLC, an Arizona  
 17 limited liability company; RAL Academy  
 18 LLC, an Arizona limited liability company;  
 Mona Guarino; and Isabelle Guarino,

19 Plaintiffs/Counterclaim Defendants,  
 20 vs.

21 Frank Candelario and Sherri Candelario,  
 22 husband and wife; Shared Housing Solutions,  
 LLC,

23 Defendants/Counterclaim Plaintiffs  
 24 Kate's House Foundation

25 Counterclaim Plaintiff

Case No. 2:21-cv-02133-SMB

**MOTION OF FRANK  
 CANDELARIO, SHERRI  
 CANDELARIO, SHARED  
 HOUSING SOLUTIONS, LLC and  
 KATE'S HOUSE FOUNDATION  
 FOR A PRELIMINARY  
 INJUNCTION AND FOR  
 EXPEDITED DISCOVERY**

26 Counterclaim Plaintiffs Frank Candelario and Sherri Candelario ("the  
 27 Candelarios"), Shared Housing Solutions, LLC ("Shared Housing Solutions"), and Kate's  
 28 House Foundation (collectively, "Candelario Counterclaim Plaintiffs") file this Motion

1 for a Preliminary Injunction to prevent Plaintiffs/Counterclaim Defendants Recovery  
2 Housing Academy, LLC (“RHA”), RAL Academy LLC (“RALA”), Mona Guarino and  
3 Isabelle Guarino Smith (collectively, “RHA/Guarino Defendants”) from continuing their  
4 unauthorized and unlawful use of the Candelario Counterclaim Plaintiffs’ intellectual  
5 property, publicity and privacy rights pending trial. The Candelario Counterclaim  
6 Plaintiffs further seek expedited discovery in advance of the preliminary injunction  
7 hearing to provide further evidence about the RHA/Guarino Defendants’ ongoing  
8 infringement and misappropriation of their intellectual property, publicity and privacy  
9 rights, and the opportunity to supplement this Motion after the collection of such  
10 discovery.

11 The RHA/Guarino Defendants have collectively engaged in a systematic,  
12 collaborative scheme to misappropriate and exploit the Candelario Counterclaim  
13 Plaintiffs’ intellectual property and publicity rights after the agreed November 19, 2021  
14 termination date of their contracts and relationship with the Candelarios. Following this  
15 termination of the relationship and termination of all rights to use the intellectual property  
16 of the Candelario Counterclaim Plaintiffs, the RHA/Guarino Defendants have continued  
17 to use, exploit and profit from the Candelarios’ original copyrighted materials, names,  
18 images and likenesses, to commercially exploit for competitive businesses purposes the  
19 trademarks of the Candelario Counterclaim Plaintiffs, and to engage in false and  
20 misleading advertising suggesting a continued association with the Candelarios and  
21 ownership of the Candelario Counterclaim Plaintiffs’ intellectual property.

22 The Candelario Counterclaim Plaintiffs are entitled to a preliminary injunction  
23 restraining each of the RHA/Guarino Defendants and all those acting in concert with them  
24 from engaging in such conduct pending trial, and from attempting to pass off the  
25 Candelarios’ original materials as their own to unsuspecting students and others in the  
26 industry. Accordingly, Candelario Counterclaim Plaintiffs seek relief as set forth in the  
27 proposed Order submitted with this Motion. Following expedited discovery, and in  
28 advance of the preliminary injunction hearing, Candelario Counterclaim Plaintiffs seek

1 leave to supplement this Motion. The following Memorandum of Points and Authorities  
 2 and accompanying Declaration of Sherri Candelario in Support of Counterclaim  
 3 Plaintiffs' Motion for a Preliminary Injunction ("S. Candelario PI Decl.") support this  
 4 Motion.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 To obtain a preliminary injunction, the moving party must establish: (1) likelihood  
 7 of success on the merits, (2) likelihood of irreparable harm absent preliminary relief, (3)  
 8 that "the balance of equities tips in [their] favor," and (4) that "an injunction is in the  
 9 public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *accord*  
 10 *Planned Parenthood Arizona, Inc. v. Humble*, 753 F.3d 905, 911 (9<sup>th</sup> Cir. 2014). In certain  
 11 cases, "serious questions going to the merits and a hardship balance that tips sharply  
 12 toward the plaintiff can support the issuance of a preliminary injunction, assuming the  
 13 other two [*Winter*] elements are met". *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d  
 14 1127, 1132 (9<sup>th</sup> Cir. 2011).

15 Section 502(a) of the Copyright Act specifically authorizes injunctive relief, and  
 16 "[a]s a general rule, a permanent injunction will be granted when liability has been  
 17 established and there is a threat of continuing violations." *Twentieth Century Fox Film*  
 18 *Corp. v. Streeter*, 438 F. Supp. 2d 1065, 1072 (D. Ariz. 2006). Moreover, "Injunctive  
 19 relief is the remedy of choice for trademark and unfair competition cases, since there is  
 20 no adequate remedy at law for the injury caused by a defendant's continuing  
 21 infringement." See *Century 21 Real Est. Corp. v. Sandlin*, 846 F.2d 1175, 1180 (9<sup>th</sup> Cir.  
 22 1988); 15 U.S.C. § 1116(a).

23 All four elements strongly support a preliminary injunction here.

## **ARGUMENT**

**I. THE CANDELARIO COUNTERCLAIM PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS.**

**A. The Candelarios Are Likely To Succeed On Their Count One For Copyright Infringement Under 17 U.S.C. § 101 *et seq.***

To prevail on a claim for copyright infringement, the claimant must show: (1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original. *Feist Publ'ns., Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991). Copyright infringement is a strict liability offense. Candelario Counterclaim Plaintiffs are “not required to demonstrate [Plaintiffs’] intent to infringe the copyright in order to demonstrate copyright infringement.” *Liberty Media Holdings, LLC v. Vinigay.com*, 2011 WL 7430062, at \*11 (D. Ariz. Dec. 28, 2011) (citing *Educ. Testing Serv. V. Simon*, 95 F. Supp. 2d 1081, 1087 (C.D. Cal. 1999) (“There is no need to prove anything about a defendant’s mental state to establish copyright infringement; it is a strict liability tort.”)).

The Candelarios own the following United States copyright registrations for four literary works that they authored and own, consisting of teaching materials on shared housing (“Candelario Copyrighted Teaching Materials”):

- a. Housing For Social Good, U.S. Copyright Reg. No. TX0009056716;
  - b. Shared Housing Strategies Presentation 2018, U.S. Copyright Reg. No. TX 9-055-057;
  - c. Shared Housing Strategies Presentation 2021, U.S. Copyright Reg. No. TX 9-055-056;
  - d. Student Materials for Social Housing Strategies: Investing for Profit and Purpose, U.S. Copyright Reg. No. TX 9-055-055.

Copies of these U.S. copyright registrations for the Candelario Copyrighted Teaching Materials<sup>1</sup> were filed with the Counterclaims (Dkt. 39) at Dkt. 39.001, 39.002,

<sup>1</sup> The deposit copies of the copyrighted materials will be made available under seal to the Court and with appropriate confidentiality designations pursuant to a protective order, because they have commercial value that would be eviscerated if they were publicly disclosed in their entirety.

1 39.003 and 39.004. The Candelario Copyrighted Teaching Materials contain original text  
2 and images authored by the Candelarios, and were substantially developed prior to their  
3 relationship with the RHA/Guarino Defendants. S. Candelario PI Decl. ¶¶ 6,10-13, 17.

4 “In any judicial proceedings, the certificate of a registration made before or within  
5 five years after first publication of the work shall constitute *prima facie* evidence of the  
6 validity of the copyright and of the facts stated in the certificate.” 17 U.S.C. § 410(c).  
7 Here, as set forth on the copyright registration certificates for the Candelario Copyrighted  
8 Teaching Materials, all of these materials were first published within the last five years.  
9 Dkt. 39.001, 39.002, 39.003 and 39.004.

10 The Candelarios never transferred any of their rights in the Candelario Copyrighted  
11 Teaching Materials to the RHA/Guarino Defendants, and all rights to continued use of  
12 such materials by the RHA/Guarino Defendants ended when the Candelarios’ Independent  
13 Contractor Agreements with the RHA/Guarino Defendants (“IC Agreements”) terminated  
14 on November 19, 2021 by mutual agreement. *See* S. Candelario PI Decl. ¶¶ 20-22, 25,  
15 28-30; IC Agreements attached to the Amended Complaint (Dkt. 40.001, 40.002 and  
16 40.003).

17 Under the Copyright Act, the Candelarios own, with respect to each of the  
18 Candelario Copyrighted Teaching Materials, the exclusive right: “(1) to reproduce the  
19 copyrighted work in copies or phonorecords; (2) to prepare derivative works based upon  
20 the copyrighted work; (3) to distribute copies or phonorecords of the copyrighted work to  
21 the public by sale or other transfer of ownership, or by rental, lease or lending; (4) ... to  
22 perform the copyrighted work publicly; and (5) ... to display the copyrighted work  
23 publicly. . . .” 17 U.S.C. § 106. After the IC Agreements’ termination, the RHA/Guarino  
24 Defendants have infringed and, on information and belief, continue to infringe the §106  
25 exclusive rights of the Candelarios to reproduce, distribute, perform and display the  
26 Candelario Copyrighted Teaching Materials and their exclusive rights to right to prepare  
27 derivative works from those copyrighted materials.

28

1           The Candelario Copyrighted Teaching Materials were used by the Candelarios and  
2 the RHA/Guarino Defendants during the term of the IC Agreements, which ended by  
3 mutual agreement on November 19, 2021. S. Candelario PI Decl. ¶¶ 23, 27-29. Upon  
4 the termination of the IC Agreements, the Candelarios provided the RHA/Guarino  
5 Defendants with a notice from counsel (“Termination of IP Rights Notice”) that the rights  
6 of the RHA/Guarino Defendants to use the original materials, names, images, likenesses  
7 and trademarks of the Candelario Counterclaim Plaintiffs (“Candelario IP”) ended with  
8 the IC Agreements. *Id.* ¶ 29. The RHA/Guarino Defendants did not substantively  
9 respond to the November 19, 2021 termination letter or the Termination of IP Rights  
10 Notice, or contest the Candelario Counterclaim Plaintiffs’ position that any rights for the  
11 RHA/Guarino Defendants to use any of the Candelario IP ended on the date of the  
12 termination. *Id.* ¶ 30.

13           Nevertheless, after the agreed November 19, 2021 termination of its relationship  
14 with the Candelarios, the Candelarios discovered that RHA/Guarino Defendants were  
15 attempting to continue shared housing classes and coaching without the Candelarios’  
16 participation, and attempting to do so by continuing to use the Candelarios’ original  
17 materials, names, likenesses, and trademarks. *Id.* ¶ 34.

18           Counsel for the Candelarios brought these infringements to the attention of the  
19 RHA/RALA counsel, who advised that RHA/RALA were working to remove the  
20 Candelarios’ names and their companies’ names from RHA/RALA materials and its  
21 website, thereby removing both the source identification and the branding from such  
22 materials to falsely suggest to students that these materials were created by RHA. *Id.* ¶  
23 33 and Exhibits 5 and 6 thereto. He also explicitly claimed that RHA/RALA “believes it  
24 has rights to use” the three-day class content, which consists primarily of the Candelario  
25 Copyrighted Teaching Materials. *Id.* ¶ 33 and Exhibit 6 thereto. The RHA/Guarino  
26 Defendants’ counsel further stated that RHA/RALA “believes it is appropriately using  
27 content to perform coaching and consulting,” which had consisted primarily of the  
28 Candelario Copyrighted Teaching Materials. *Id.*

1       The “content to perform coaching and consulting” referenced by the RHA counsel  
2 refers to a “downloadable back office” of the RHA website, which contains shared  
3 housing materials made available to all shared housing coaching students. This material,  
4 both before and after the termination of the IC Agreements, consists primarily of the  
5 Candelarios’ original teaching material, including the Candelario Copyrighted Teaching  
6 Materials, as well as content featuring the Candelarios’ names, likenesses and trademarks.  
7 S. Candelario PI Decl. ¶ 35 and Exhibit 7 thereto. These “downloadable back office”  
8 materials remained on the RHA website “downloadable back office” after the termination  
9 of the IC Agreements and, on information and belief, remain available today to existing  
10 and new students who purchase shared housing coaching services from RHA. This  
11 material substantially consists of Candelario Copyrighted Teaching Material. *Id.*

12       For the reasons set forth above and based on additional evidence that the Candelario  
13 Counterclaim Plaintiffs will collect through expedited discovery should the Court allow  
14 such discovery, the Candelarios are likely to succeed on their copyright infringement  
15 counterclaims, because they have at least preliminarily established: (1) ownership of valid  
16 copyrights, and (2) copying of original constituent elements the copyrighted material,  
17 through the RHA/Guarino Defendants’ unauthorized continued commercial retention, use,  
18 sale and distribution of original constituent elements of the Candelario Copyrighted  
19 Teaching Materials without authorization after the termination of the IC Agreements.  
20 Such conduct violates the Candelarios’ exclusive rights to reproduce, distribute, sell,  
21 lease, lend, perform or display the Candelario Copyrighted Teaching Materials and to  
22 prepare derivative works of such materials.

23       Section 502(a) of the Copyright Act specifically authorizes injunctive relief for  
24 copyright infringement. 17 U.S.C. § 502(a). There is no indication that the RHA/Guarino  
25 Defendants’ copyright infringement has ceased or will cease pending trial. If these  
26 infringements are allowed to persist while the case is pending, the Candelarios will  
27 continue to suffer irreparable harm. S. Candelario PI Decl. ¶ 36.

28

1                   **B. The Candelarios Are Likely To Succeed On Their Count Two For**  
 2                   **Trademark Infringement Under The Lanham Act**

3                   Under the Lanham Act, it is unlawful for any person to use in commerce in  
 4 connection with any goods or services, any “word, term, name, symbol, or device” or “any  
 5 false designation of origin, false or misleading descriptions of fact, or false or misleading  
 6 representation of fact, which- (A) is likely to cause confusion, or to cause mistake, or to  
 7 deceive as to affiliation, connection, or association of such person with another person, or  
 8 as to the origin, sponsorship, or approval of his or her goods, services, or commercial  
 activities by another person... .” 15 U.S.C. § 1125(a)(1).

9                   Here, the RHA/Guarino Defendants lost their rights to use any of the Candelario  
 10 Counterclaim Plaintiffs’ intellectual property rights, or to suggest any continued affiliation  
 11 with the Candelarios or their companies, when the IC Agreements ended by mutual  
 12 consent on November 19, 2021. S. Candelario PI Decl. ¶¶ 19-21, 28-29. Any continued  
 13 RHA/Guarino Defendants’ commercial use of the Candelarios’ name, images, or  
 14 trademarks after that date, including the federally registered Kate’s House and Kate’s  
 15 House Foundation marks and the Shared Housing Solutions marks (pending federal  
 16 registration), falsely suggests an affiliation with the Candelario Counterclaim Plaintiffs  
 17 that no longer exists. Copies of the federal Kate’s House and Kate’s House Foundation  
 18 federal registrations and the Shared Housing Solutions federal applications are identified  
 19 at S. Candelario PI Decl. ¶ 14 and provided with the Counterclaims (Dkt. 37) at Exhibits  
 20 5-11. Any such references fall squarely within the definition of a “word, name or...any  
 21 false designation of origin” that “is likely to confuse, or cause mistake, or to deceive as to  
 22 affiliation, connection, or association of such person with another person, or as to the  
 23 origin, sponsorship, or approval of his goods, services or commercial activities.” *See* 15  
 24 U.S.C. § 1125(a)(1).

25                   There can be no real dispute about most of the facts relevant to the Candelario  
 26 Counterclaim Plaintiffs’ likelihood of success on its Lanham Act claims. The Candelario  
 27 Counterclaim Plaintiffs own exclusive rights to the Kates’ House, Kate’s House  
 28 Foundation and Shared Housing Solutions trademarks and to the exclusive right to

1 authorize use of the Candelarios' name and images for commercial purposes. Any  
2 authorization to make use of any of the Candelario Counterclaim Plaintiffs' marks, names  
3 or images was expressly revoked on November 19, 2021, when the IC Agreements ended  
4 by mutual consent. Continued use of any of these Candelario marks, names or images in  
5 connection with the RHA/Guarino Defendants' shared housing education services would  
6 serve "to cause confusion, or to cause mistake, or to deceive as to affiliation, connection,  
7 or association of such person with another person, or as to the origin, sponsorship, or  
8 approval of his or her goods, services, or commercial activities by another person" –  
9 namely, the Candelarios and their businesses Kate's House Foundation and Shared  
10 Housing Services LLC. Such unauthorized use by a now unrelated party of these same  
11 names, images and marks for the same shared housing education services offered by the  
12 Candelarios since long before their relationship with RHA obviously and inevitably  
13 creates a likelihood of confusion about the source or sponsorship of RHA/RALA shared  
14 housing education services and materials. If virtually identical marks are used with  
15 substantially similar products or services, "likelihood of confusion would follow as a  
16 matter of course." *Brookfield Commc'ns. v. W. Coast Ent. Corp.*, 174 F.3d 1036, 1056 (9<sup>th</sup>  
17 Cir. 1999).

18 Nor is there a question that injunctive relief is appropriate where trademark  
19 infringement or unfair competition has occurred: "Injunctive relief is the remedy of choice  
20 for trademark and unfair competition cases, since there is no adequate remedy at law for  
21 the injury caused by a defendant's continuing infringement." See *Sandlin*, 846 F.2d  
22 at 1180; 15 U.S.C. § 1116(a) ("[a] plaintiff seeking any such injunction shall be entitled to  
23 a rebuttable presumption of irreparable harm upon a finding of a violation identified in  
24 this subsection . . . in the case of a motion for a preliminary injunction or temporary  
25 restraining order.")

26 The only remaining questions are whether RH/Guarino Defendants continued to  
27 use these Candelario Counterclaim Plaintiffs' trademarks, names and images after their  
28 rights to do so ended, and whether there is a risk that such infringing conduct will continue.

1           Use of the Candelario Counterclaim Plaintiffs' trademarks and the Candelarios'  
 2 names and likenesses has continued well after the termination of the IC Agreements. They  
 3 did continue such infringing conduct and there is reason to believe the infringing conduct  
 4 will not stop absent intervention by the Court. *See* S. Candelario PI Decl. ¶ 33-35 and  
 5 Exhibits 4, 5 and 7 thereto.

6           Candelario Counterclaim Plaintiffs believe that such infringing use by the  
 7 RHA/Guarino Defendants continues today, and seek expedited discovery to reveal the  
 8 facts about such continued use. Even if such use is not presently underway, however, there  
 9 is a substantial risk that such use will recur pending trial. This would likely occur through  
 10 further use of the names, images and trademarks of the Candelario Counterclaim Parties  
 11 in RHA/Guarino Defendants' teaching materials or advertising. Such unlawful conduct  
 12 will also occur if RHA/Guarino Defendants falsely present Candelario teaching materials  
 13 as their own by doctoring them to remove the Candelario source and branding  
 14 identification from such materials, thereby creating a likelihood of confusion, mistake and  
 15 deception as to true source of those materials.

16           **C.     The Candelarios Are Likely To Succeed On Their Count Three For  
 17                 Violation Of Their Common Law Right Of Publicity**

18           Arizona recognizes a cause of action for violation of one's right to publicity. *Canas*  
 19 *v. Bay Ent., LLC*, 498 P.3d 1082, ¶¶ 9-21 (Az. Ct. App. 2021). Arizona relies upon the  
 20 Restatement (Third) of Unfair Competition § 46 in establishing that “[o]ne who  
 21 appropriates the commercial value of a person's identity by using without consent the  
 22 person's name, likeness, or other indicia of identity for purposes of trade is subject to  
 23 liability.” *See In re Estate of Reynolds*, 235 Ariz. 80, ¶ 8, 327 P.3d 213 (Ct. App. 2014).  
 24 To establish a claim for violation of one's right to publicity, the claimant must show: “(1)  
 25 the defendant's use of the plaintiff's identity; (2) the appropriation of plaintiff's name or  
 26 likeness to the defendant's advantage, commercially or otherwise; (3) lack of consent; and  
 27 (4) resulting injury.” *Pooley v. Nat'l Hole-In-One Ass'n*, 89 F. Supp. 2d 1108, 1111 (D.  
 28 Ariz. 2000).

1           Here, all these elements are present. After their relationship with the Candelarios  
 2 ended, the RHA/Guarino Defendants continued to use the Candelarios' identity in the  
 3 form of their names and images in connection with the RHA/Guarino Defendants' shared  
 4 housing education business. S. Candelario PI Decl. ¶¶ 32-35 and Exhibits 4-7 thereto.  
 5 Such appropriation was made for the commercial advantage of RHA/Guarino Defendants  
 6 and their shared housing education business. The Candelarios never consented to such  
 7 continued use; to the contrary, they expressly withheld such consent in their IP Notice  
 8 Letter and in a Cease and Desist letter. S. Candelario PI Decl. ¶¶ 29 and 33 and Exhibits  
 9 3 and 5 thereto. And there is resulting injury, in terms of damage to the Candelarios'  
 10 business and reputation and the erosion of the value of their endorsement as a result of  
 11 having their names, images and likenesses used and promoted by a diminished and  
 12 inexperienced entity that they no longer support and with which they have no further  
 13 association. *Id.* ¶ 36.

14           **II. THE CANDELARIOS WILL SUFFER IRREPARABLE HARM ABSENT A**  
 15 **PRELIMINARY INJUNCTION.**

16           To establish irreparable harm, the movant must show “a sufficient causal  
 17 connection between the alleged irreparable harm and the activity to be enjoined”, but  
 18 “need not further show that the action sought to be enjoined is the exclusive cause of the  
 19 injury.” *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 886 F.3d 803, 819 (9<sup>th</sup> Cir.  
 20 2018) (internal quotation omitted). Irreparable harm exists where there is no adequate  
 21 legal remedy to cure the harm. *See Arizona Recovery Hous. Ass'n v. Arizona Dep't of*  
 22 *Health Services*, 462 F. Supp. 3d 990, 997 (D. Ariz. 2020). “The mere fact that the  
 23 damages are susceptible to quantification . . . does not necessarily mean that a preliminary  
 24 injunction will not lie. . . .” *Id.*

25           “Copyright infringement is presumed to give rise to irreparable injury.” *Streater*,  
 26 438 F. Supp. 2d at 1072. Likewise, trademark infringement and unfair competition are  
 27 presumed to cause irreparable harm by their very nature. *Sandlin*, 846 F.2d at 1180; 15  
 28 U.S.C. § 1116(a). Ongoing violations are likely to confuse or mislead consumers, and

thus, Candelario Counterclaim Plaintiffs will suffer continued harm to their business and reputation as a result. *See, e.g., Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 841 (9<sup>th</sup> Cir. 2001) (affirming grant of preliminary injunction and noting that evidence of threatened loss of prospective customers or goodwill certainly supports a finding of the possibility of irreparable harm); *Rent-A-Center, Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9<sup>th</sup> Cir. 1991) (finding damage to ongoing recruitment efforts and goodwill or reputation support a finding of irreparable harm because they are difficult to quantify); *CytoSport, Inc. v. Vital Pharm.*, 617 F. Supp. 2d 1051, 1080 (E.D. Cal. 2009) (irreparable harm can result from the loss of control over business reputation, damage to goodwill, and threatened loss of customers).

Here, the irreparable harm underway that will continue without the Court's intervention includes: (1) falsely associating the Candelario Counterclaim Plaintiffs with an inexperienced and diminished entity that they no longer support, (2) creating confusion about a continued relationship between the Candelario Counterclaim Plaintiffs and RHA/RALA, (3) eroding the reputation that the Candelarios and Kate's House Foundation and Shared Housing Solutions, LLC have painstakingly built over the last seven years, (4) creating uncertainty about the source and authorship and credibility of the Candelarios' original teaching materials, and (5) undermining confidence in the work the Candelarios, Kate's List Foundation and Shared Housing Solutions, LLC have done and continue to do for the mutual benefit of recovering drug users, homeless women, men and women from departments of corrections, drug court members and their respective communities, and the investors who support their Kate's House Shared Housing model vision and make shared housing possible. S. Candelario PI Decl. ¶ 36.

### **III. THE BALANCE OF HARMS AND THE PUBLIC INTEREST FAVOR PRELIMINARY INJUNCTIVE RELIEF.**

An injunction here protects rights under the copyright, trademark, publicity and unfair competition laws and thus, the balance of the equities and public interest also favor an injunction. *See Hydentra HLP Int'l v. Porn69.org*, No. CV-15-00451, 2016 WL

1 3213208, at \*3 (D. Ariz. June 10, 2016) (concluding the public interest in enforcement of  
 2 copyright laws favored an injunction); *CrossFit, Inc. v. Maximum Human Performance,*  
 3 *LLC*, No. 12cv2348, 2013 WL 1627953, at \*4 (S.D. Cal. Apr. 12, 2013) (concluding the  
 4 public interest in “protecting trademarks generally” favored an injunction).

5 Here, if the injunction is granted, the RHA/Guarino Defendants need only use their  
 6 own materials for their shared housing education services, cease using materials created or  
 7 provided by the Candelarios, and shut down any online or advertising or promotion  
 8 materials that they have distributed that show or refer to the Candelarios, Kate’s House or  
 9 Shared Housing Solutions in connection with their shared housing education and coaching  
 10 businesses. On the other hand, if the injunction is denied, the Candelarios, Kate’s House  
 11 Foundation and Shared Housing Solutions will suffer the irreparable and other harm set  
 12 forth above. S. Candelario PI Decl. ¶ 36. This would continue to undermine the vital  
 13 mission of the Candelario Counterclaim Plaintiffs to raise funds to provide their model of  
 14 shared housing to those who need it most, for the benefit of those individuals, their  
 15 communities, their partners in government and the justice system, and the investors who  
 16 make this possible. *Id.* It will make that mission much more difficult and confuse these  
 17 stakeholders, and create a situation in which the Candelarios will continue to be falsely  
 18 associated with RHA/RALA, entities with which they no longer have or want any  
 19 association, and the RHA/RALA programs, which the Candelarios no longer endorse and  
 20 over which the Candelarios have no input or control.

21 For these reasons, the Court should grant the preliminary injunction in the form set  
 22 forth in the *proposed* order filed with this Motion.

23 **IV. THE COURT SHOULD ALLOW TARGETED EXPEDITED  
 24 DISCOVERY IN CONNECTION WITH THIS MOTION**

25 The RHA/Guarino Defendants have sought expedited discovery in connection with  
 26 their preliminary *injunction* motion relating to their defamation claim. In particular, they  
 27 seek “expedited discovery prior to the preliminary injunction hearing on issues relevant to  
 28 that hearing: (1) depositions of Sherri Candelario and Frank Candelario, not to exceed four

1 hours each, and (2) ten interrogatories and ten requests for production of documents to  
2 Defendants.” Dkt. 34 at 2-4. The Candelario Counterclaim Plaintiffs, as noted in their  
3 Response to that motion, believe that “for judicial efficiency and to avoid serial depositions,  
4 serial expedited discovery and serial preliminary injunction hearings, a schedule for such  
5 discovery, briefing and a single preliminary injunction hearing should be scheduled as part  
6 of the February 14 status conference already set by the Court.” Dkt. 36 at 8.

7 The Candelario Counterclaim Plaintiffs do not dispute that expedited discovery may  
8 be appropriate in advance of a preliminary injunction hearing, and this is particularly the  
9 case where intellectual property infringement is alleged. *Disney Enters. V. VidAngel, Inc.*,  
10 869 F.3d 848, 855, 867 (9<sup>th</sup> Cir. 2017). The Candelario Counterclaim Plaintiffs do not  
11 oppose the expedited discovery that the RHA/Guarino Defendants proposed, provided that  
12 they are granted corresponding expedited discovery. In particular, the Candelario  
13 Counterclaim Plaintiffs propose:

- 14 1. The RHA/Guarino Defendants and the Candelario Counterclaim Plaintiffs  
15 may each serve a total of 15 Requests for Production and 15 Interrogatories  
16 to one another (not separate sets by or to each party) on the topics at issue in  
17 the respective preliminary injunction motions. Responses will be due 14 days  
18 from service. Document productions must be completed within 28 days from  
19 service.
- 20 2. The RHA/Guarino Defendants may take depositions of Frank Candelario and  
21 Sherri Candelario, and the Candelario Counterclaim Plaintiffs may take the  
22 depositions of Recovery Housing Academy LLC, Emmanuel Guarino and  
23 Tyler Reiser (or 3 other entities of their choice) on the topics at issue in the  
24 respective preliminary injunctions. Each deposition will be conducted  
25 remotely and will not exceed 4 hours each.
- 26 3. Supplemental preliminary injunction briefs and responses will be due  
27 thereafter on a schedule to be determined at the February 14 status conference.

1 The Candelario Counterclaim Parties look forward to further discussing these issues at the  
2 February 14 status conference.

3 WHEREFORE, the Candelario Counterclaim Plaintiffs respectfully request that this  
4 Court grant its motion and order the requested relief in the form provided in the proposed  
5 order submitted with this Motion attached as Exhibit A, as well as any further relief that the  
6 Court deems just and proper.

7  
8 DATED this 31<sup>st</sup> day of January, 2022.

9  
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